Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

LEROY ANDERSON, LANCE LEON ANDERSON, and CHRISTOPHER LEE ANDERSON,

Petitioners,

v.

LAS VEGAS TRIBE OF PAIUTE INDIANS, LAS VEGAS PAIUTE TRIBAL COUNCIL, ALFREDA MITRE, KENNY ANDERSON, TONIA CARTER, MARLA PETE, LARRY PETE, JEANETTE ANDERSON HART, GERALD FRYE, LAWANNA RAMOS, CAROL PATRICK, and NORMAN HARRIS, individually and in their capacity as Tribal Council Members, LAS VEGAS TRIBAL COURT OF PAIUTE INDIANS, ROBERT J. LYTTLE, DOES I through XX, and ROE CORPORATIONS I through XX,

Respondents.

On Petition For A Writ of Certiorari

To The United States Court of Appeal For the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

A. Whether an Indian is entitled to bring a civil action in Indian Tribal Court for violation of federal constitutional rights guaranteed in the Indian Civil Rights Act, 25 U.S.C. § 1302.

B. Whether an Indian tribe and individuals acting illegally under color of the Tribe can avoid the application of the Indian Civil Rights Act by invoking so called tribal sovereign immunity through its Tribal Court.

C. Whether tribal sovereign immunity is an absolute bar to vindication of Indian civil rights violations in Tribal Court, so as to deprive aggrieved Indians of a forum to present their claims.

II. LIST OF PARTIES

The list of all parties appears in the caption.

SCR 14 1.(a).

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IV. CITATIONS OF OPINIONS

The decision in this case was not published. The case number of the United States Court of Appeals for the Ninth Circuit is No. 95-16161. A copy of the decision is attached in the Appendix.

A copy of the U.S. District Court of Nevada Decision, No. CV-S-95-55-PMP(RJJ), is also included in the Appendix.

V. BASIS OF JURISDICTION

The date of the decision appealed from is December 6, 1996.

Jurisdiction is pursuant to 28 U.S.C. § 1254.

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS

A. United States Constitution, Amendment V

"No person shall * * * be deprived of life, liberty or property, without due process of law."
(Entire amendment appears in the Appendix.)

B. The Indian Civil Rights Act, 25 U.S.C. § 1302

"No Indian tribe in exercising powers of self government shall —
* * *
(8) deny to any person within its jurisdiction the equal protections of its laws or deprive any

person of liberty or property without due process of law."
(Entire code sections appear in the Appendix.)

VII. STATEMENT OF THE CASE

The Complaint and the Ninth Circuit Court of Appeals' Decision show the following facts. (References are to petitioners' Verified Complaint for Violation of Indian Civil Rights Acts)

Petitioners Leroy Anderson, Lance Leon Anderson, and Christopher Lee Anderson (hereinafter petitioners) are of Las Vegas Paiute Indian Tribe blood. Leroy Anderson is 13/16 degree Las Vegas Paiute blood and his sons Lance and Christopher are 13/32. Each petitioner exceeds the minimum blood quantum requirement for membership in the Las Vegas Paiute Tribe. Furthermore, no challenge has been made to their clearly meeting the Las Vegas Paiute Tribe's constitutional requirement. The Las Vegas Paiute Tribal Constitution, Article III, § 1, states:

"The membership of the Las Vegas Paiute Tribe shall include all persons with at least 1/4 degree Paiute Indian blood . . ."

Petitioners duly filed applications for membership in the Las Vegas Paiute Tribe. However, in spite of petitioners' clear qualifications for membership into the Tribe, their applications were either ignored or not acted upon since 1992. Since this case was originally filed, membership has been denied, and petitioners have not been given a reason for this denial of tribal membership which is required by tribal ordinance. It should be noted that petitioner Leroy Anderson's sister is a member, his brother is buried on the reservation, and his father was a tribal chief at one time. Thus, although certain members of petitioner Leroy Anderson's immediate family of identical blood quantum are admitted, he and his children were not admitted, nor given a reason as required for their membership denial.

Following the inordinate delays by the Tribal Council, and its individual members, in acting upon petitioners' applications, petitioners filed a Complaint in the Las Vegas Paiute Tribal Court to remedy this treatment. The Complaint was filed in Tribal Court alleging substantial violations of the Indian Civil Rights Act, pursuant to the

directives announced by this court in Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

In essence, Santa Clara Pueblo, supra, held that an Indian seeking vindication for violations of the Indian Civil Rights Act concerning membership, must do so in the Tribal Court.

Petitioners' situation was not isolated. In previous cases involving other applicants whom the Tribal Council similarly ignored, those Indians filed virtually identical complaints in Tribal Court. The then tribal judge, Gary Davis provided the Tribal Court as the forum for remedying such unlawful discrimination in membership, consistent with Santa Clara Pueblo, supra. Furthermore, Judge Davis also ruled that tribal sovereign immunity did not bar such lawsuits. Judge Davis let it be known that if the Tribal Council refused to act in conformity with the Tribal Constitution, he would remedy that wrong. As a result, those other previous applicants were forthwith admitted to membership by the Tribal Council. (See Complaint, p. 6, par. 19-20.)

Judge Davis ruled likewise for petitioners by giving the Tribal Council the opportunity to correct their wrongs. However, prior to the return date to Tribal Court, the Tribal Council found another judge from New Mexico to replace Judge Davis. (Complaint, p. 7, par. 23)

With the Tribal Council's hand picked replacement for Judge Davis, the Tribe reasserted tribal sovereign immunity as a bar to petitioners' Indian civil rights Complaint, which the new judge forthwith embraced. Then, this new judge promptly dismissed petitioners' Complaint. (Complaint, pp. 7-8, par. 27)

Petitioners, having thus been deprived of access to tribal court remedies, were then faced with a serious problem. The Tribal Court forum, which has been directed by this court in Santa Clara Pueblo, supra, as the place to resolve federal Indian Civil Rights claims (which was in fact previously so used), was immediately foreclosed. The Tribal Court never reached any of the merits of petitioners' civil rights claims and instead, used the concept of tribal sovereign

immunity as a bar to any resolution of federal Indian civil rights violations by the Tribal Council on behalf of the Tribe.

Petitioners thus were unable to present, let alone vindicate, the most fundamental of rights guaranteed in the Indian Civil Rights Act of due process and equal protection of the law in the very forum this court has specifically directed as the place to resolve such disputes.

Left with no other alternative to present their federal Indian civil rights violations within the Tribal Court system, petitioners filed their case in the United States District Court for Nevada. (Complaint, p. 8, par. 28)

The United States Court of Appeals for the Ninth Circuit held that tribal sovereign immunity justified the United States District Court's dismissal of petitioners' Complaint in federal court because "The Tribe has not consented to suit in federal court." (See Unpublished Memorandum Decision of the Court of Appeals, p. 4.)

Based upon that decision which thereby totally deprived petitioners of all forums to remedy violations of the

federal Indian Civil Rights Act, this Petition For A Writ of Certiorari is filed.

VIII. REASONS FOR GRANTING THE WRIT OF CERTIORARI

This case represents an important federal constitutional and statutory problem for all Indians of every tribe in the United States. The rights enumerated in the Indian Civil Rights Act are the most fundamental rights of man which Congress in its plenary authority over Indian tribes has mandated to be preserved and protected. These are not esoteric "rights" of some sort that are in a developing stage. These rights of due process and equal protection of the law are those that the United States Constitution, Congress, and this court have always held indispensable bulwarks against governmental abuse.

In view of the special nature of Indian tribes in the United States and the problems that have sometimes worked to deprive individual Indians of fundamental rights, Congress exercised its jurisdiction over the Indian tribes with the

passage of the Indian Civil Rights Act, 25 U.S.C. §§ 1301, 1302, and 1303.

The Indian Civil Rights Act's (§ 1302) opening words are extremely important and an explicit directive from Congress that "No Indian tribe in exercising powers of self-government shall — * * *" deprive individual Indians of their specified federally constitutionally grounded rights.

It is recognized by petitioners that there is a long series of cases that discussed whether an individual Indian may initiate a civil right case in federal court. These cases ultimately resulted in Santa Clara Pueblo v. Martinez, supra, which held that vindication of Indian civil rights violations must be resolved in the tribal courts.

While there may have initially been some debate whether the tribal court, or federal court, was the proper initial place to resolve these disputes, Santa Clara Pueblo's ruling is that such cases must go to tribal court first. This ruling was made in deference to the unique status of Indian tribes within the United States and the limited sovereign immunity they enjoy as a result.

The problem, however, arises when the tribe itself, while exercising those "powers of self-government," forecloses all tribal forums to present Indian civil rights violations by the invocation of "sovereign immunity."

Sovereign immunity has thus become an impenetrable wall which shields unlawful tribal actions and those acting unlawfully under its color. This wall allows carte blanche to the tribe and those supposedly acting in its name to deprive some, or all, Indians of the most basic civil rights with complete impunity.

This case represents a festering problem for the Indian people regarding fundamental rights guaranteed by Congress. Some tribes have now figured out that they can do whatever they want with absolute disregard of individual Indian rights. They know full well that this court has, because of their special status, entrusted them to carry out the mandate of Congress. However, in exercising powers of self-government, the tribe here has used that very power to deprive basic fundamental rights it is entrusted to observe by

Congress, by barring tribal court civil rights actions through "sovereign immunity."

Petitioners' reasons for this petition is not a request of this court to determine the merits of their civil rights claims, but rather they ask this court to consider and correct the most basic and fundamental problem: In what court can an Indian who has a civil rights claim present his case if he can not present his federal claim in Tribal Court?

Clearly the federal law says he is guaranteed fundamental rights. The Supreme Court ruled he must resolve this in tribal court, yet tribal court says he cannot even present his case there because of sovereign immunity. Such a denial of access to any court presents a serious problem that impacts all aggrieved individual Indians.

As the various Indian tribes enter lucrative business ventures and/or government subsides, there is a human frailty to which Indians are not immune. That frailty is to isolate those who are otherwise entitled to share in the bounty from ever being able to do so because to extend tribal benefits might diminish their share or power. On the other hand, it is

just as natural a desire for those who are deprived of tribal benefits to want to participate if they are so eligible under tribal law. With these two competing factions, there must be a workable resolution, and that is determined not just by concepts of due process of law and equal protection, but by the ability to access some legal forum to resolve these issues. The widespread nature of these problems are illustrated in articles appearing in the nationally distributed "Indian Country Today," appearing inter alia in the June 15, 1995, and February 29, 1996, issues.

If an individual Indian is unable to access a forum to present his claim, then the constitutional rights guaranteed by Congress to individual Indians are meaningless.

The Appeals Court here, as well as others, have argued that the denial of access to federal court is based on the fictional premise that somehow the Tribe has not "consented" to such lawsuits. The problem, however, is not about a sovereign tribe's "consent" to a lawsuit. The problem is when the tribe, in exercising powers of self-government, has violated the express directive of Congress, and the United

States Supreme Court, to extend fundamental civil rights. While at the same time, the Tribe deprives the aggrieved Indian of a forum for hearing such cases.

The inability of an individual Indian to have access to at least the tribal court to present his case is what gives rise to seeking relief in federal court, not whether the tribe "consented" to be sued in federal court. The consideration of whether access to the federal court is appropriate has risen only after the express refusal by tribal court to hear the case.

There is only one case known where this court has indirectly considered the problem presented here. That case is Dry Creek Lodge, Inc. v. Arapaho and Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980), certiorari denied 449 U.S. 1118 (1981). The Tenth Circuit Appeals Court in Dry Creek Lodge held:

> "It is obvious that the plaintiffs in this appeal have no remedy within the tribal machinery nor with the tribal official in whose election they cannot participate. The record demonstrates that plaintiffs sought a forum within the tribes to consider the issue. They sought a state remedy and sought a remedy in the federal courts. The limitations and restrictions present in Santa Clara should not

> be applied. There has to be a forum where the dispute can be settled."
> (Dry Creek Lodge, supra, at 685.)

The Appeal Court for the Tenth Circuit thus held that where a non tribal member sought remedies before the tribal court and was denied access by the tribal court, then federal court would exercise jurisdiction over the matter if there is to be any justice. The United States Supreme Court let this decision stand by denying certiorari.

The Ninth Circuit has obviously not followed the Dry Creek Lodge, supra, reasoning of the Tenth Circuit, but has taken the tack that, regardless of how egregious the claimed Indian civil rights violations, a denial of access to tribal court means the violation must go unremedied.

The Ninth Circuit Appeals Court claims in its decision that habeas corpus is the only procedure available in federal court to remedy Indian civil rights cases. However, only a few rights set forth in the Indian Civil Rights Act are capable of habeas corpus review because of the nature of the right "to test the legality of . . . detention by order of an Indian tribe." (25 U.S.C. § 1303) For instance, those rights that concern

freedom of speech, religion, the press, and the like are not the types of matters that come under habeas corpus review. Yet, since these rights do not fit into the realm of those reviewable by habeas corpus, these rights are relegated not just to second class status but rather have absolutely no status in either tribal court or federal court. There is simply no means by which to present, protect, or enforce those rights.

Clearly, the purpose of federal court access in the situation presented here, and in Dry Creek Lodge, supra, is not available. This court must take cognizance of the complete debasement and vitiation of extremely important rights that necessarily result from a denial of access to any court.

This court should exercise its supervisory authority to correct this serious impediment to congressionally guaranteed Indian rights and freedom. The threat is real because it already happened in this case. It is insidious because many Indians will never have an opportunity to present their case anywhere beyond the confines of the reservation and a dismissal of their case presented to tribal court. Those

people simply disappear and take with them the burden of deprivation and denial of fundamental natural rights. The threat is pervasive as to these unfortunate people because the privileged members of the tribe protect themselves at the expense of those excluded.

Preventing an Indian's access to Tribal Court to remedy Indian civil rights violations is an undeniable wrong. This is an opportunity to correct that wrong. It is an opportunity to insure that an Indian must have at the very minimum the right and ability to access the tribal court to attempt to vindicate a wrong he believes was inflicted against him. This court must also determine what federal court access is available when a tribal court refuses to hear the Complaint concerning their federal rights.

Finally, there is no doubt what Congress intended in its passage of the Indian Civil Rights Act. Congress intended that the Indian tribes shall not deprive an Indian of certain basic fundamental rights of man. Congress, and this court, could not have envisioned that a tribe's dereliction, and avoidance of this sacred responsibility of self-government,

would consist of such conduct as a tribe getting rid of a judge who protects Indian civil rights and then, hiring a judge from a distant state who would rule that no one can get past sovereign immunity in tribal court. Also, it could not be forecast that the lower federal courts would nod approvingly of this conduct and say in so many words, that the tribal court is entitled to avoid its congressionally imposed duty by such hijinks.

Amazingly, all this abuse echoes from another time when Thomas Jefferson wrote of another sovereign who ignored the law, deprived people of access to courts and made judges dependent on the crown. Jefferson's words are apt description of why people rose in revolt:

> "He has obstructed the administration of justice by refusing his assent to laws for establishing judiciary powers.
>
> He has made judges dependent on his will alone, for the tenure of their offices, and the amount and paiment of their salaries."

("Declaration of Independence," July 4, 1776, as published in Thomas Jefferson, Writings, Library of America, Viking Press, 1984).

Congress demanded that this kind of fundamental abuse be avoided by the Indian tribes when acting as a sovereign. This court then directed that sovereign to provide a forum to present and resolve civil rights abuses. It is the Tribe that has deliberately done neither.

This denial is basic, and the problem is very real. It is capable of widespread harm in the Indian nations. This court should recognize that the decision of the Ninth Circuit has so far departed from the accepted and usual course of judicial proceedings as to call for this court to exercise its supervisory powers.

It can not be said that a federal appeals court's decision which functionally prohibits an Indian from accessing either tribal court, or federal court, is an "accepted and usual course judicial proceeding." Such a decision is the antithesis of "judicial proceedings" and nullifies the direct protection guaranteed by Congress of the most basic of human rights.

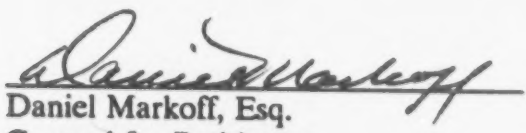
It is a sad commentary on Indian civil rights when Indian Tribal Courts close their doors to civil rights matters, and the federal courts condone such closures as a supposed

legitimate exercise of sovereign immunity. No amount of legal jargon, as to the presumed importance of sovereign immunity, can justify the denial of the right of Indian people to access tribal court and present their civil rights grievances.

IX. CONCLUSION

For the foregoing reasons, this Petition For A Writ of Certiorari should be granted.

DATED this 5 day of March, 1997.



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CHRISTOPHER LEE ANDERSON

APPENDIX

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

LEROY ANDERSON, LANCE LEON ANDERSON, and CHRISTOPHER LEE ANDERSON,	)	No. 95-16161
	)	D.C. No. CV-S-95-55-PMP(RJJ)
Plaintiffs-Appellants,	)	MEMORANDUM*
v.	)	
LAS VEGAS TRIBE OF PAIUTE INDIANS, LAS VEGAS PAIUTE TRIBAL COUNCIL, ALFREDA MITRE, KENNY ANDERSON, TONIA CARTER, MARLA PETE, LARRY PETE, JEANETTE ANDERSON HART, GERALD FRYE, LAWANNA RAMOS, CAROL PATRICK, and NORMAN HARRIS, individually and in their capacity as Tribal Council Members, LAS VEGAS TRIBAL COURT OF PAIUTE INDIANS, ROBERT J. LYTTLE, DOES I through XX, and ROE CORPORATIONS I through XX,	)	
Defendants-Appellees.	)	

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
For the District of Nevada
Hon. Philip M. Pro, Presiding

Argued and Submitted November 8, 1996
San Francisco, California

Before: FLETCHER, FARRIS, and TASHIMA, Circuit Judge

MEMORANDUM

Leroy Anderson and his sons, Lance and Christopher, (collectively, "Anderson") appeal from the district court's dismissal of their civil rights action against the Las Vegas Tribe of Paiute Indians and several of its officials (collectively, "Tribe"). The Andersons' claims arise out of the Tribe's denial of their membership applications. The Tribe has not waived its sovereign immunity to suit in federal court. The district court therefore lacked jurisdiction and we affirm.

I. BACKGROUND

The Andersons applied for membership in the Las Vegas Tribe of Paiute Indians on February 13, 1992. They meet the blood quantum requirement for membership in the

Tribe.[1] The Tribe took no action on the Andersons' applications for several months. The Andersons sued the Tribe in Tribal Court, seeking review and approval of their membership applications. After a hearing ordered by the Tribal Court, the Tribal Council denied the Andersons' applications. The Tribe then moved the Tribal Court to dismiss the Andersons' tribal lawsuit. On October 29, 1993, Tribal Judge Anthony F. Lyttle dismissed the suit, finding that sovereign immunity barred the Tribal Court from exercising jurisdiction over the Tribe.

On January 17, 1995, the Andersons filed suit in the United States District Court for the District of Nevada,

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[1] The Tribal Constitution provides that the membership of the Tribe

> shall include all person with at least 1/4 degree Paiute Indian blood whose names appear on the official census of the Las Vegas Indian Colony dated January 1, 1940, and the descendants of these persons who possess at least 1/4 degree Paiute Indian blood; provided, that they are not enrolled or affiliated with another Indian tribe or group.

Las Vegas Paiute Tribal Constitution, Art. III, § 1.

alleging that the Tribe, the Council, and Judge Lyttle had conspired to deprive the Andersons of due process and equal protection by denying their membership applications, thereby violating the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1302, and various federal civil rights statutes. The Tribe moved to dismiss the Andersons' suit. On June 2, 1995, the district court granted the Tribe's motion to dismiss, finding that sovereign immunity deprived the court of jurisdiction over the Tribe and that the Andersons had failed to state any claim for which relief could be granted. This appeal followed.

II. STANDARD OF REVIEW

We review de novo the district court's conclusion that it lacks jurisdiction. Wilson v. A.H. Belo Corp., 87 F.3d 393, 396 (9th Cir. 1996); Vaccaro v. Dobre, 81 F.3d 854, 856 (9th Cir. 1996). We also review de novo the legal question of whether an Indian tribe possesses sovereign immunity. United States v. James, 980 F.2d 1314, 1319 (9th Cir. 1992), cert. denied, 510 U.S. 838 (1993). Finally, we review de novo the district court's dismissal for failure to state a claim

pursuant to Federal Rule of Civil Procedure 12(b)(6). Stone v. Travelers Corp., 58 F.3d 434, 436-37 (9th Cir. 1995).

III. DISCUSSION

Indian tribes are sovereign powers and possess sovereign immunity from suit. Puyallup Tribe v. Washington Dep't of Game, 433 U.S. 165, 172-173 (1977); Turner v. United States, 248 U.S. 354, 358 (1919). Accordingly, the federal courts may exercise jurisdiction over the Tribe only if the Tribe unequivocally has waived its immunity from suit or Congress has done so through legislation. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978). In Santa Clara Pueblo, the Supreme Court held that in the absence of an express statement by the tribe or Congress to the contrary, "suits against the tribe under the ICRA are barred by its sovereign immunity from suit." Id. at 59.

The Tribe has not consented to suit in federal court. Congress has not amended the ICRA to overrule Santa Clara Pueblo. Thus, no basis exists for the federal courts to "interfer[e] with tribal autonomy and self-government" by exercising jurisdiction over the Tribe. Id. Sovereign

immunity is not a discretionary doctrine. It is the sovereign's right and an absolute bar to suit. Chemehuevi Indian Tribe v. California State Bd. of Equalization, 757 F.2d 1047, 1052 n. 6 (9th Cir.), rev'd in part on other grounds, 474 U.S. 9 (1985); California v. Quechan Tribe, 595 F.2d 1153, 1155 (9th Cir. 1979). The district court lacked jurisdiction over the Tribe.

Tribal officials acting in their official capacities and within the scope of their authority share the Tribe's sovereign immunity. Imperial Granite Co. v. Pala Tribe of Mission Indians, 940 F.2d 1269, 1271 (9th Cir. 1991). Although the Andersons purported to sue the various defendants in their individual and official capacities, the complaint alleged that the defendants acted at all relevant time within the scope of their official duties. Sovereign immunity therefore bars suit against the defendant officials as well as the Tribe itself and the district court properly held that it lacked jurisdiction over the officials.

Sovereign immunity does not shield from suite government officials who commit unconstitutional acts. See,

e.g., Ex Parte Young, 209 U.S. 123, 158 (1908); Coeur d'Alene Tribe of Idaho v. Idaho, 42 F.3d 1244, 1251 (9th Cir. 1994) ("any action on the part of state officials that violates federal law cannot be attributed to the state."). However, tribal officials are not bound by those provisions of the U.S. Constitution that limit federal or state authority. Santa Clara Pueblo, 436 U.S. at 56. Thus, even if the officials acted outside their authority and discriminated against the Andersons, the Andersons' due process and equal protection claims can arise only under the ICRA.

The only relief available in federal court under the ICRA is habeas corpus. Santa Clara Pueblo, 436 U.S. at 61; Trans-Canada Enterprises, Ltd. v. Muckleshoot Indian Tribe, 634 F.2d 474, 476 (9th Cir. 1980) ("Even though the Indian civil Rights Act imposes a form of due process limitation upon Indian tribes . . . the sole remedy for such a violation . . . is federal habeas relief"), cert. granted, 116 S. Ct. 1415, and cert. denied, 116 S. Ct. 1416 (1996). The Andersons do not seek habeas relief and therefore fail to state a claim for which relief can be granted in federal court.

IV. CONCLUSION

We do not now decide whether the Andersons have or have not been treated unfairly in tribal forums. We hold only that the Tribe's sovereign immunity precludes consideration of the Andersons' claims. The district court properly dismissed all of the Andersons' claims.

AFFIRMED.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LEROY ANDERSON, et al.,	)	CV-S-95-55-PMP(RJJ)
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
LAS VEGAS TRIBE OF PAIUTE INDIANS, et al.,	)	[Relevant portions pertinent to appeal and Petition For Certiorari only]
	)	
Defendants.	)	
	)	

Before the Court are:

Defendants' Motion to Dismiss and Request for Sanctions (#9), Plaintiffs' Opposition (#17),[1] Defendants' Reply (#20).

Plaintiffs' Countermotion for Sanctions (#17), Defendants' Opposition (#20), Plaintiffs' Reply (#21), Defendants' Reply (#22).

[1] Plaintiffs, in their Opposition to the Motion to Dismiss (#17), request oral arguments. Oral arguments will not be heard because the motion to dismiss will not be construed as a motion for summary judgment. All extraneous material beyond the pleadings are excluded from consideration.

Defendants' Motion to Strike (#20), Plaintiffs' Opposition (#21), Defendants' Reply (#22).

Plaintiffs' Motion to Strike Defendants' Reply to Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Sanctions and Plaintiffs' Opposition to Defendants' Motion to Strike (#23).

I. Facts

Plaintiffs are Leroy Anderson, Lance Anderson and Christopher Lee Anderson. Plaintiffs exceed the blood quantum requirements of the Las Vegas Paiute Tribe[2] and filed membership applications with the tribe. When Plaintiffs' applications for membership were not acted upon, Plaintiffs filed a lawsuit before the Las Vegas Paiute Tribal Court claiming they were being denied membership by arbitrary and

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[2] Article III of the Constitution and Bylaws of the Las Vegas Tribe of Paiute Indians provides in part:

Section 1. The membership of the Las Vegas Paiute Tribe shall include all persons with at least 1/4 degree Paiute Indian blood whose names appear on the official census of the Las Vegas Indian Colony dated January 1, 1940, and the descendants of these persons who possess at least 1/4 degree Paiute Indian blood; provided, that they are not enrolled or affiliated with another Indian tribe or group.

capricious discrimination that denied equal protection of the laws and due process. The Tribal Court stayed its proceedings to allow the Tribal Council to act upon the applications. Subsequently, the Tribal Council rejected Plaintiffs' applications. Then, the Tribal Court Judge granted the Tribal Council's motion to dismiss on the ground of sovereign immunity. Plaintiffs then filed this action against defendants: Las Vegas Tribe of Paiute Indians, Las Vegas Paiute Tribal Council, individual Tribal Council Members, Las Vegas Tribal Court of Paiute Indians and Robert J. Lyttle. Plaintiffs bring this action under 25 U.S.C. § 1302 (Indian Civil Rights Act), 42 U.S.C. § 1983, 1985, 1988 and 2000(d), seeking declaratory and injunctive relief and monetary damages.

II. Motion to Dismiss

Defendants move for dismissal based on: FRCP 12(b)(5) Insufficiency of Process, 12(b)(1) Lack of Subject Matter Jurisdiction, 12(b)(2) Lack of personal Jurisdiction and 12(b)(6) Failure to State Claims upon which Relief can be Granted.

a. Insufficiency of Process

* * *

b. Lack of Subject Matter Jurisdiction and Personal Jurisdiction

(i) Sovereign Immunity of the Tribe

Defendants also move for dismissal on the ground that this Court lacks subject matter jurisdiction and personal jurisdiction due to tribal sovereign immunity. Indian tribes possess sovereign immunity from suit absent a clear waiver by the tribe or express congressional authorization. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978). Tribal officials acting in their official capacity, within the scope of their authority, are also immune. Imperial Granite Co. v. Pala Band of Mission Indians, 940 F.2d 1269, 1271 (9th Cir. 1991). Plaintiffs argue that Ordinance 6 waives tribal sovereign immunity. Ordinance 6, Article IV, provides in part:

> Section 1. Right of Appeal
> Any person filing an application for enrollment which has been rejected by the Las Vegas Paiute Tribal Council may appeal such rejection to the Las Vegas Paiute Tribal Court.

As to suit in tribal court, the Tribal Court of the Las Vegas Tribe of Paiute Indians held that sovereign immunity barred Plaintiffs' claims in tribal court. As to suit in federal court, Ordinance 6 clearly does not waive tribal sovereign immunity in federal court. Any waiver of sovereign immunity must be unequivocally expressed. Id. (citations omitted). Accordingly, this Court lacks jurisdiction over Plaintiffs' claims.

c. Doctrines of Exclusive Jurisdiction and Comity

Defendants also move for dismissal based on the doctrines of exclusive jurisdiction and comity. They assert that issues regarding membership in a tribe fall within the exclusive jurisdiction of the tribe and that the federal courts should defer to the tribal courts.

The great weight of authority holds that tribes have exclusive authority to resolve membership issues. See Martinez v. Southern Ute Tribe, 249 F.2d 915, 920 (10th Cir. 1957), cert. denied, 356 U.S. 960 (1958). (a tribe has authority to determine all questions of its own membership); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 72 n. 32 (1978) ("[a] tribe's right to define its own membership for tribal

purposes has long been recognized as central to its existence as an independent political community"). The dispute in this case involves right to membership in the Las Vegas Paiute Indian Tribe, a matter which should be resolved by the tribe. Therefore, Defendants' Motion to Dismiss shall be granted.

d. Plaintiffs Lack Standing to Bring this Suite

In order to have standing to bring suit, one of the requirements that Plaintiffs must show is an injury of a legally protected interest that is concrete and particularized. Lujan v. Defendants of Wildlife, 504 U.S. 555 (1992). Plaintiffs have failed to allege such an injury because there is no legally protectible right to membership in an Indian tribe. Therefore, Defendants' Motion to Dismiss shall be granted.

e. Failure to State a Claim Upon Which Relief can be Granted

In consideration a motion to dismiss for failure to state a claim upon which relief can be granted, all material allegations in the complaint are accepted as true and are to be construed in the light most favorable to the non-moving party. Russell v. Landrieu, 621 F.2d 1037, 1039 (9th Cir.

1980). A dismissal under Fed. R. Civ. P. 12(b)(6) is essentially a ruling on a question of law. North Star Int'l v. Arizona Corp. Comm., 720 F.2d 578, 580 (9th Cir. 1983). For a defendant-movant to succeed, it must appear to a certainty that a plaintiff will not be entitled to relief under any set of facts that could be proven under the allegations of the complaint. Halet v. Wend Inv. Co., 672 F.2d 1305, 1309 (9th Cir. 1982).

(i) No Injunctive or Monetary Relief Available Under the Indian Civil Rights Act (ICRA)

In this action, Plaintiffs seek injunctive relief and monetary damages. The only relief available in federal court under ICRA is a writ of habeas corpus. Santa Clara Pueblo, 436 U.S. at 72. Trans-Canada Enterprises, Ltd v. Muckleshoot Indian Tribe, 634 F.2d 474, 476 (9th Cir. 1980). Therefore, the relief requested in the complaint cannot be granted to the extent such relief is premised on ICRA.

(ii) Claims under Federal Civil Rights Statutes are not Actionable for Actions Taken Under Color of Tribal Law

Actions taken under color of tribal law may only be examined in federal court under the provisions of ICRA. R.J. Williams Co. v. Fort Belknap Housing Authority, 719 F.2d 979, 982 (9th Cir. 1983), cert. denied, 472 U.S. 1016 (1985). "Constitutional guarantees . . . are not applicable to the exercise of governmental powers by an Indian tribe except to the extent that they are made explicitly binding by the Constitution or are imposed by Congress." Trans-Canada Enterprises, Ltd, supra, at 476-77 (citations omitted). Therefore, Plaintiffs cannot maintain actions under federal civil rights statutes.

III. Request for Sanctions

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IV. Countermotion for Sanctions

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V. Defendants' Motion to Strike

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VI. Plaintiffs' Motion to Strike

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IT IS THEREFORE ORDERED that Defendants' Motion to Dismiss (#9) is GRANTED.

* * *

DATED this 2nd day of June, 1995.

PHILIP M. PRO
United States District Judge

United States of America Constitution

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

§ 1301. Definitions

For purposes of this title [25 USCS §§ 1301 et seq.], the term —

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians;

(3) "Indian court" means any Indian tribal court or court of Indian offense; and

(4) "Indian" means any person who would be subject to the jurisdiction of the United States as an Indian

under section 1153, title 18, United States Code, if that person were to commit an offense listed in that section in Indian country to which that section applies.

(April 11, 1968, P. L. 90-284, Title II, § 201, 82 Stat. 77; Nov. 5, 1990, P. L. 101-511, Title VIII, § 8077(b), (c), 104 Stat. 1892.)

§ 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall —

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and [or] a fine of $5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or derive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

(April 11, 1968, P. L. 90-284, Title II, § 202, 82 Stat. 77; Oct. 27, 1986, P. L. 99-570, Title IV, Subtitle C, Part V, § 4217, 100 Stat. 3207-146.)

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to rest the legality of his detention by order of an Indian tribe.

(April 11, 1968, P. L. 90-284, Title II, § 203, 82 Stat. 78.)